

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**P.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POSTAL SECURITY  
FORCE, Boston, MA, Employer**

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**Docket No. 17-0687  
Issued: December 21, 2017**

*Appearances:*

*Jacqueline Shanahan, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 6, 2017 appellant, through counsel, filed a timely appeal from August 18, 2016 and January 6, 2017 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP properly determined that appellant's court-ordered restitution did not constitute a global settlement.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances outlined in the Board's prior decision are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On April 4, 1988 appellant, then a 41-year-old police supervisor, filed an occupational disease claim (Form CA-2) alleging that he sustained acute anxiety and somatic problems causally related to factors of his federal employment. OWCP accepted the claim for a temporary adjustment disorder with anxious mood. It paid appellant wage-loss compensation for total disability beginning December 1988 on the periodic rolls.

As a requirement of remaining on the periodic rolls, compensationers must provide a financial overview of their income each year by completing a Form EN1032. Appellant signed EN1032 forms on September 7, 1990, September 7, 1991, and August 20, 1992. On these forms he certified that he was neither employed nor self-employed during the covered previous 15-month period.

On August 3, 1993 appellant was indicted on 28 counts of mail fraud and three counts of filing false statements in violation of 18 U.S.C. §§ 1341 and 1001 respectively. The indictment specified that he knowingly and willfully made false statements on three signed EN1032 forms because, during the time he indicated that he was unemployed, he operated and managed a business called PGA Ammunition.

On December 16, 1993 appellant was convicted of all 31 counts after a four-day jury trial. In a March 24, 1994 judgment in a criminal case, a U.S. District Judge in the District of Massachusetts sentenced him to a term of five months in prison followed by three years of supervised release. The judge further found that appellant should pay restitution not to exceed \$35,778.61 to the U.S. Department of Labor (DOL).

On January 18, 1994 OWCP notified appellant that it was terminating his compensation, effective December 16, 1993, based on his fraud conviction pursuant to section 102 of Public Law 103-112, 107 Stat. 1089 (October 21, 1993). Appellant timely requested an oral hearing before an OWCP hearing representative on the issue of termination. The hearing was scheduled for September 13, 1994.

By decision dated February 22, 1994, OWCP also determined that appellant forfeited his entitlement to compensation from September 8, 1989 through August 20, 1992 under section 8106(b) because he had concealed his earnings during this period.

OWCP, on February 22, 1994, informed appellant of its preliminary determination that he was at fault in the creation of an overpayment in the amount of \$88,438.22 because he had failed to disclose his earnings as required. It further advised him of its preliminary determination that he was at fault in creating the overpayment. OWCP requested that appellant complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial

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<sup>3</sup> Docket No. 95-1024 (issued June 6, 1997).

documentation. Additionally, it notified him that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence or a prerecoupment hearing. No further information was received by OWCP from appellant.

Following the September 13, 1994 oral hearing, by decision dated September 28, 1994, OWCP's hearing representative affirmed the termination of appellant's compensation as the applicable statute mandated such a result in the case of a claimant convicted of felony fraud relating to his benefits under FECA. He found that appellant's arguments that he had appealed his conviction and that he was totally disabled were not relevant to the termination of his compensation.

By decision dated December 16, 1994, OWCP finalized the overpayment of compensation in the amount of \$88,438.22 and its finding that he was at fault in the creation of the overpayment. Appellant was advised to submit a check for the entire amount as repayment.

Appellant appealed to the Board. By decision dated June 6, 1997, the Board affirmed the February 22, September 28, and December 16, 1994 OWCP decisions.<sup>4</sup> The Board found that appellant had forfeited his entitlement to compensation from September 8, 1989 through August 20, 1992 because he knowingly failed to report earnings from self-employment and, consequently, received an overpayment for that period of \$88,438.22 for which he was at fault in the creation. The Board further determined that OWCP had properly terminated his compensation as he had been convicted of fraud. The Board also noted that appellant's sentencing required him to pay restitution of \$36,778.61.<sup>5</sup>

In an October 14, 1999 memorandum to the file, OWCP indicated that it had erroneously applied interest to the entire overpayment amount of \$88,438.22 as the court order did not apply interest to the restitution amount of \$35,778.61. It separated the overpayment amounts into two separate debts, \$35,778.61 for the court-ordered amount and a balance of \$52,659.61 to which it assessed interest.

By letter dated April 7, 2014, a U.S. Attorney for the District of Massachusetts advised counsel that appellant's criminal restitution debt had expired as it was more than 20 years from the judgment date of March 23, 1994. It instructed him to cease restitution payments and released a lien on his property.

OWCP, on April 16, 2015, advised appellant that the March 1994 restitution order was separate from the overpayment affirmed by the Board on June 6, 1997.

Appellant's U.S. Senator contacted OWCP regarding his overpayment. In a November 20, 2015 response, OWCP advised that the debt due to the court-ordered restitution of

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<sup>4</sup> Docket No. 95-1024 (issued June 6, 1997). On October 28, 1998 the Board granted the Director's Petition for Correction to specify that forfeiture was warranted for any felony fraud conviction related to the receipt of benefits under FECA. *Order Granting Petition*, Docket No. 95-1024 (issued October 28, 1998). On May 3, 1999 the Board granted another Petition for Correction from the Director and clarified its discussion of 5 U.S.C. § 8148. *Order Granting Petition for Correction*, Docket No. 95-1024 (issued May 3, 1999).

<sup>5</sup> This appears to be a typographical error as court documents, *infra*, indicate that the amount is \$35,778.61.

\$35,778.61 had been discharged due to the expiration of the statute of limitations, but that the other debt due to appellant's forfeiture of compensation under FECA as a result of his fraud conviction was a separate debt from the criminal sentencing provisions and had no statute of limitations.

Counsel, on December 22, 2015, asserted that the court-ordered restitution was not to exceed \$35,778.61 paid to DOL. She contended that it constituted a global settlement for full satisfaction of the debt.

OWCP, in a response dated January 25, 2016, informed counsel that appellant had an outstanding balance on the debt from his forfeiture of compensation in the amount of \$66,856.34, which was being recouped by a garnishment from an annuity through the Office of Personnel Management. It noted that there was no evidence of record supporting that the court issued a global settlement, but instead imposed restitution as a financial penalty. OWCP further indicated that the Board had discussed the restitution order in its 1997 decision without finding that it was a global settlement. It advised that appellant was responsible for the outstanding balance on the debt.

By letter dated February 11, 2016, counsel contended that the Board did not directly address the issue of whether the decision constituted a global settlement in its 1997 decision. She argued that the finding by the criminal court judge that the restitution should not exceed a set amount constituted a global settlement.

In a June 13, 2016 response, OWCP reiterated that the Board had addressed the issue of restitution in its 1997 decision and failed to find that the March 1994 sentencing order was a global settlement. It advised that the U.S. Attorney's instructions to stop paying restitution addressed the criminal proceeding rather than OWCP's administrative proceeding.

Counsel, on June 20, 2016, requested a formal decision with appeal rights.

By decision dated August 18, 2016, OWCP found that the March 23, 1994 judgment from the U.S. District Court of Massachusetts ordering appellant to pay restitution did not constitute a global settlement. It thus found that he still owed the remainder of the balance on his debt following credit for the restitution paid under the court order.

On September 6, 2016 counsel identified the issue as whether the judge's instructions that the restitution was "not to exceed" the specified amount constituted a global settlement. She maintained that the Board had not yet decided the matter. On September 13, 2016 counsel requested an oral hearing.

On October 25, 2016 counsel requested a review of the written record in lieu of an oral hearing. She contended that the judge found that he should pay restitution not to exceed \$35,778.61 to OWCP, which constituted a global settlement. Counsel additionally maintained that the judge discussed how he reached the amount of restitution in the trial transcript. She advised that in the transcript the judge noted that appellant was entitled to disability retirement at 40 percent of his salary, but instead received 75 percent of his salary from OWCP. The judge found that the government could collect the difference between the 40 percent and 75 percent of his salary, noting that appellant was entitled to some of the money.

Counsel submitted a March 23, 1994 transcript of the disposition from the proceedings before the U.S. District Court. The judge in that case found that appellant should pay some restitution, but also found that he was entitled to a portion of the compensation. He utilized the difference between the 40 percent of his salary appellant could have received from disability retirement and the 75 percent of his salary that he received from OWCP to find restitution of \$35,778.61.

By decision dated January 6, 2017, OWCP's hearing representative affirmed the August 18, 2016 decision. She found that the August 18, 2016 court order that appellant make restitution of \$35,778.61 did not clearly indicate that it represented a global settlement or full satisfaction of debt owed to the government.

On appeal counsel contends that the amount of restitution ordered by the U.S. District Court constituted a global settlement as it found that the amount paid was "not to exceed" \$35,778.61. She maintains that the transcript demonstrated the judge's intent for the amount to represent full satisfaction of the debt as he did not agree that more was due OWCP.

### **LEGAL PRECEDENT**

Regarding court-ordered restitution in fraud cases, OWCP's procedures provide:

"When a debtor has been convicted in court of filing a false claim which resulted in an overpayment/debt due the government, the court often orders the defendant to make restitution to the United States as a condition of probation. The amount of restitution may or may not be the full amount of the debt owed to OWCP."

"a. *If the Court Order states* that the restitution amount will be in full satisfaction of the debt owed the United States (a 'Global Settlement'), the Court Order takes precedence over [OWCP's] administrative debt collection process. In such cases, if the restitution amount is less than the outstanding debt principal balance, the principal balance must be reduced to the restitution amount set by the court. Also, interest may not be applied to such debts unless stipulated in the Court Order. However, if the probation period ends and the debtor fails to make full restitution of the amount ordered by the court, OWCP may pursue collection of the full original debt amount. Before pursuing this matter, OWCP may wish to request SOL assistance in contacting the Department of Justice to ascertain the status of the restitution."

"b. *If the Court Order does not represent* a 'Global Settlement,' OWCP should continue to pursue collection of the full amount of the debt, taking credit for any restitution amounts received. Unless assessment of interest is stipulated in the Court Order, interest may not be applied to the restitution amount and any restitution payments received should be applied directly to the debt principal."<sup>6</sup>

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<sup>6</sup> Ronald E. Ogden, 56 ECAB 278 (2005); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.300.18 (May 2004); *see also* K.S., Docket No. 18-0639 (issued April 22, 2009).

## ANALYSIS

On prior appeal, the Board affirmed OWCP decisions finding that appellant forfeited his entitlement to compensation from September 8, 1989 through August 20, 1992 and that he received an overpayment of compensation for which he was at fault during that period in the amount of \$88,438.22. The Board noted that he was required to pay court-ordered restitution of \$36,778.61.<sup>7</sup> Issues addressed and resolved by the Board in a final decision are *res judicata* and not subject to further review by the Board absent further review by OWCP.<sup>8</sup> In this case, as OWCP reviewed new legal arguments raised by counsel and issued a new merit decision regarding the contentions, the matter is not barred for review by the Board under *res judicata*.<sup>9</sup>

The Board finds that the court-ordered restitution in this case was not intended to constitute a global settlement. There is no specific language in the District Court order providing that the \$35,778.61 payment was to be in full satisfaction of the debt due the United States. For this reason, OWCP is not precluded from continuing to pursue recovery of appellant's overpayment debt.<sup>10</sup> As to the method of recovery, the Board does not have jurisdiction over this issue as appellant was not entitled to continuing compensation benefits.<sup>11</sup>

On appeal counsel contends that the restitution amount constituted a global settlement as the judge found that the amount he should pay was "not to exceed" \$35,778.61. The judge, however, was referring to the amount of restitution that he found that appellant should pay as part of his criminal sentencing, which also included a prison term and supervised release. He did not specifically determine that the amount was in full satisfaction of the debt.<sup>12</sup>

Counsel also asserts that the transcript by the judge demonstrated that he intended the amount to represent full satisfaction of the debt. In the March 23, 1994 transcript, the judge found that appellant could have received 40 percent of his salary if on disability retirement, but instead received 75 percent of his salary from OWCP, and determined that the restitution amount should be the difference between these amounts. Section 8106(b) of FECA, however, provides that an employee who "fails to make an affidavit or report when required or knowingly omits or understates any part of his earnings, forfeits his right to compensation with respect to any period for which the affidavit or report was required."<sup>13</sup>

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<sup>7</sup> As noted, the amount of court ordered restitution was actually \$35,778.61.

<sup>8</sup> See *David E. Newman*, 48 ECAB 305 (1997).

<sup>9</sup> See *R.M.*, Docket No. 15-0538 (issued September 23, 2016).

<sup>10</sup> See *K.S.*, Docket No. 08-0639 (issued April 22, 2009).

<sup>11</sup> See *Robert Ringo*, 53 ECAB 258 (2001).

<sup>12</sup> See *Joseph M. Popp*, 48 ECAB 624 (1997).

<sup>13</sup> 5 U.S.C. § 8106(b).

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant's court-ordered restitution did not constitute a global settlement.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 6, 2017 and August 18, 2016 merit decisions of the Office of Workers' Compensation Programs are affirmed.<sup>14</sup>

Issued: December 21, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.